

(2009) 05 JH CK 0043

Jharkhand High Court

Case No: Writ Petition (S) No. 5996 of 2007

Sita Ram Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: May 12, 2009

Acts Referred:

- Bihar Pension Rules, 1950 - Rule 43(5)

Hon'ble Judges: Ajit Kumar Sinha, J

Bench: Single Bench

Advocate: Jitendra Nath, for the Appellant; J.C. to S.C. III, for the Respondent

Judgement

Ajit Kumar Sinha, J.

This writ petition has been preferred for issuance of an appropriate writ, order or direction in the nature of mandamus commanding upon the respondents to pay him full pension, gratuity, G.P.F. and other retirement benefits which has already been sanctioned by A.G. Jharkhand, Ranchi vide P.P.O. No. HZBROD 297 dated 18.12.06 after setting-aside impugned order like the objection A.G. Jharkhand, Ranchi and Account Officer, Hazaribagh/Chief Engineer Road Construction Department, Jharkhand, Ranchi contained in his memo No. 5854(5) dated 18.9.07. The further prayer is for issuance of a direction to respondents to stop recovery from the amount of retirement benefits. The objection of Account Officer, Hazaribagh and also that of A.G. Jharkhand, Ranchi contained in the P.P.O. No. HZBROD 297 dated 18.12.06 and also to set aside as regards passing of Departmental Account Examination is now meaningless and does not apply to Retired Officer in the light of order dated 17.7.07 passed by this Hon'ble Court while disposing of W.P(S) No. 3778/2006 with a direction to consider the grievance of the petitioner in the matter of payment of all retirement dues Including pension. On the other hand the A.G., Jharkhand, Ranchi/Account Officer, Hazaribagh objected the payment of the same on the ground of non-passing of departmental examination which should have been ignored by the Deptt. of Road Construction Jharkhand,

Ranchi. The further prayer is for issuance of a direction to the respondents to pay statutory as well penal interest @ 10% from the due date to the date of payment with cost of litigation as Rs. 10000/-.

2. It appears that the employee has died on 13A20H1 and in his place his wife has been substituted. The main grievance remains that no pensionary benefit and other retiral dues have been paid till date.

The learned Counsel for the respondents submits that a decision has been taken in this regard. It will be relevant to quote para-15 of the counter affidavit filed on behalf of respondent no.4:

That in reply to para 6, it is submitted that the final pension sanctioned by the A.G., Jharkhand vide P.P.O. No. HZB ROD -297 on dt 15.12.2006. Hence, the payment of full pension to be made through Hazaribagh Treasury, so the question does not arise to deny the payment of pension by the Department.

Thus, the admitted position in view of the aforesaid fact remains that In spite of sanction order till date no payment has been made.

3. Even the ground taken about the Departmental Examination is unsustainable in the eyes of law In view of the fact that Rule 43(5) of the Bihar Pension Rule has not been invoked and in view of the Full Bench Judgment of this Court passed in 2007 (4) JLR 459 (Laxman Prasad Gupta v. State of Jharkhand) in which it has been specifically held at paragraph 20 which is quoted as under:

20. In view of the above discussion, we come to the following conclusion. To sum up:

In the light of the absence of any material to show that the excess amount was received by the petitioner on mis-representation, collusion, fraud or negligence, the said excess amount cannot be recovered out of the retiral dues, after retirement, without following the procedure contemplated under Rule 43(5) of the Bihar Pension Rules. In this case, the said procedure, which is mandatory, has not been followed. Therefore, the action of the respondents for recovery of the amount from the retiral dues is not valid in law.

Again a Full Bench Judgment of this Court reported in 2007 (4) JLR 466 (Smt. Normi Topno v. The State of Jharkhand) at paragraph 30 it has been held as under:

30. If a departmental proceeding is not initiated by a competent authority while the Government employee was in service; after retirement, it is only the State Government which is empowered to initiate such proceeding under Rule 43(b) subject to the limitation of four years from the date of occurrence.

4. Considering the aforesaid facts and circumstances of the case and in view of the admitted position, the respondent No. 4, as well as concerned Treasury Officer are directed to release the retiral admissible dues including pension of the petitioner in accordance with law and as per their own sanction order within a period of two

months from the date of receipt of a copy of this order.

This writ petition is accordingly disposed of.